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19 April 2018

Secretary General  
Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong  
(Attn: Ms Sophie LAU)

Dear Ms Lau,

**Bills Committee on Guangzhou-Shenzhen-Hong Kong  
Express Rail Link (Co-location) Bill**

**Letter from Hon AU Nok-hin dated 10 April 2018**

We refer to your letter dated 10 April 2018, which encloses the written enquiry from Hon AU Nok-hin dated 10 April 2018 on the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill (“Bill”). Our reply is as follows.

## **(1) “Long Title” part of Hon AU Nok-hin’s written enquiry**

### Impact of the Bill on the boundary of the Hong Kong Special Administrative Region (“HKSAR”)

(Part 1(1) of Hon AU Nok-hin’s written enquiry)

The relevant operative provisions in the Bill are Clauses 4 and 6, while the Long Title sets out the purposes of the Bill in general terms in compliance with rule 50(3) of the Rules of Procedure of the Legislative Council (“LegCo”). Clause 4 specifies the area of the West Kowloon Station Mainland Port Area, whilst Clause 6(1) is the deeming provision in respect of application of laws and jurisdiction. Clause 6(2) provides that Clause 6(1) does not affect the boundary of the administrative division of the HKSAR promulgated by the Order of the State Council of the People’s Republic of China No. 221 (i.e. the same boundary referred to in Schedule 2 to the Interpretation and General Clauses Ordinance (Cap. 1)).

### Drafting issues of the Long Title

(Part 1(2) of Hon AU Nok-hin’s written enquiry)

In the Bill, the precise area to be declared as the West Kowloon Station Mainland Port Area is specified in Clause 4 which is to be read together with Schedule 2 (which contains plans). This is the relevant operative provision. In compliance with rule 50(3) of the LegCo Rules of Procedure, the long title sets out the “purposes of the bill in general terms”. For this reason, it is appropriate to use the phrases “an area” and “某範圍” as bilingual equivalents in the Long Title to refer to the area specified in the operative provision.

As stated in paragraph 2.1.7 of Drafting Legislation in Hong Kong — A Guide to Styles and Practices, “Under LegCo Rule 50(3) every Bill (whether principal or amending) must have a long title setting out the purposes of the Bill in general terms. The long title puts the reader on notice as to the purpose or subject of the legislation. It has to be wide enough to embrace the whole of the contents of the Bill and is usually drafted to be specific enough to give fair notice of the subject of the Bill.” In drafting the Long Title, we have struck an appropriate balance among different considerations, so as to ensure that rule 50(3) of the LegCo Rules of Procedure is complied with.

The Long Title and relevant operative provisions of the Bill refer to the declaration of “an area” (in Chinese, “範圍” and not “地域”) as the West Kowloon Station Mainland Port Area because the area concerned is in fact parts of three levels within the building of the West Kowloon Station. Article 2 of the Co-operation Arrangement also refers to the area (“範圍”) of the Mainland Port Area.

#### Matters in relation to trains

(Parts 1(3) to (5) of Hon AU Nok-hin’s written enquiry)

Hon AU Nok-hin’s written enquiry mentioned a Member’s question in relation to the provisions of Clause 5<sup>1</sup> at the meeting on 27 March 2018 concerning whether a passenger would be considered to be

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<sup>1</sup> Clause 5 is extracted as follows –

- (1) For the purposes of this Ordinance, a train compartment of a passenger train in operation on the Hong Kong Section of the Express Rail Link (including a passenger train which is in motion, stationary and during embarkation or disembarkation) is to be regarded as part of the West Kowloon Station Mainland Port Area.
- (2) For the purposes of subsection (1), a passenger train is not in operation –
  - (a) while within Shek Kong Stabling Sidings; or
  - (b) while making a journey from Shek Kong Stabling Sidings to West Kowloon Station or a journey from West Kowloon Station to Shek Kong Stabling Sidings.

situated both inside and outside the Mainland Port Area if he stuck certain body parts out the window of a high-speed rail passenger train. As explained by the HKSAR Government officials at the meeting, train compartments of high-speed rail passenger trains are designed to be enclosed and the windows cannot be opened. Such a scenario could not have happened. It is during embarkation and disembarkation of high-speed rail passenger trains, i.e. at a time when the doors are open, that train compartments are not enclosed.

No cargo train runs along the Guangzhou-Shenzhen-Hong Kong Express Rail Link (“XRL”). Apart from passenger trains, the MTR Corporation Limited operates engineering vehicles on the Hong Kong Section of the XRL to conduct maintenance works. The Hong Kong Fire Services Department also purchased Rail-Road Fire Appliances that can travel on both roads and rail lines for emergency rescue. These engineering and rescue vehicles are not meant to provide cross-boundary passenger service, and thus are not to be regarded as part of the Mainland Port Area.

#### Adoption of “certain purposes” in the Long Title

(Parts 1(6) to (7) of Hon AU Nok-hin’s written enquiry)

The relevant operative provision in the Bill is Clause 6(1). Under that Clause, the provision that “the Mainland Port Area is to be regarded as an area lying outside Hong Kong but lying within the Mainland” has effect only to the extent of certain purposes, namely the purposes regarding application of laws and delineation of jurisdiction (except for reserved matters). The use of the phrase “for certain purposes” in the Long Title is sufficient to reflect generally the effect of that Clause.

As mentioned above, the Long Title is drafted in compliance with rule 50(3) of the LegCo Rules of Procedure. The relevant operative provision in the Bill (namely Clause 6(1)) is clear and unambiguous. It provides for the effect of the deeming provision in respect of application of laws and jurisdiction.

## **(2) “Preamble” part of Hon AU Nok-hin’s written enquiry**

### Legal effect of a preamble

(Part 2(1) of Hon AU Nok-hin’s written enquiry)

A preamble is an introductory and surrounding part of an ordinance which may be used as an aid to construction of the operative provisions of the ordinance, but is not an operative provision itself.

### Use of a preamble to provide relevant context

(Part 2(2) of Hon AU Nok-hin’s written enquiry)

Preambles may be used to provide the relevant contexts. The Bill is prepared for the third step of the “Three-step Process” to put in place the co-location arrangement at the West Kowloon Station. Hence, its relevant context is the fact that the first and second steps of the “Three-step Process” had been undertaken. The first step refers to the Co-operation Arrangement between the Mainland and the Hong Kong Special Administrative Region on the Establishment of the Port at the West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link for Implementing Co-location Arrangement (“Co-operation Arrangement”). The second step refers to the Decision of the Standing Committee of the National People’s Congress (“NPCSC”) on Approving the Co-operation Arrangement between the Mainland and the Hong Kong Special Administrative Region on the Establishment of the Port at the

West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link for Implementing Co-location Arrangement (“Decision”). The first and second steps are mentioned in paragraphs (1) and (2) of the Preamble respectively. Accordingly, the content of the Preamble of the Bill accurately and appropriately sets out the relevant context.

Supplementary agreement(s) and amendment bill(s)

(Part 2(3) of Hon AU Nok-hin’s written enquiry)

As stated in Part 2 of the reply by this Bureau to the written enquiry from Hon IP Kin-yuen dated 10 April 2018 (LC Paper No. CB(4)897/17-18(02)), the Bill is drafted in accordance with the NPCSC’s Decision made on 27 December 2017 as well as the approved Co-operation Arrangement in order to implement the Co-operation Arrangement.

As indicated in the NPCSC’s Decision, the HKSAR should enact legislation to ensure the implementation of the Co-operation Arrangement. Should both sides subsequently sign supplementary agreement(s) pursuant to Article 16 of the Co-operation Arrangement<sup>2</sup>, and the additional contents cannot be covered by the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Ordinance (“Ordinance”) to be enacted in future, the Government will put forward amendment bill(s) to the LegCo in the light of actual circumstances.

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<sup>2</sup> Article 16 of the Co-operation Arrangement stipulates that –  
Matters which are not fully addressed in this Co-operation Arrangement may be expressly provided for by means of supplementary agreement(s) to be signed between the two sides after consultation and reaching consensus.  
If this Co-operation Arrangement needs to be amended as a result of any change in the conditions of operation or regulation of the West Kowloon Station Port or for any other reason, the two sides must, after consultation and reaching consensus, sign a written document and submit it to the Central People’s Government for approval.

Matters in relation to the right to use of the Mainland Port Area

(Parts 2(4) to (7) of Hon AU Nok-hin's written enquiry)

As indicated in the letter issued by this Bureau in response to the LegCo Secretariat dated 4 April 2018 (LC Paper No. CB(4)865/17-18(01)), venues within the area of the Mainland Port Area will be made available by the HKSAR to the Mainland side for use and for exercising jurisdiction in accordance with the Co-operation Arrangement. Matters such as the acquisition of the right to use, duration and fees would be provided for by an agreement to be signed by both sides. The HKSAR Government is now conducting discussions with the Mainland on the issue and will report to the public at an appropriate juncture.

Under the co-location arrangement, the use of the Mainland Port Area by Mainland personnel in conducting clearance procedures for high-speed rail passengers involves a practical demand for a venue. So long as the implementation of the co-location arrangement is continued, the HKSAR Government and the Mainland authorities will need to negotiate on the extension of the agreement on the right to use at different junctures. As such, we do not envisage the said scenario where the Ordinance would continue to operate after the expiry of the right to use of the Mainland Port Area.

Yours sincerely,



( Ronald CHENG )

for Secretary for Transport and Housing

c.c. Secretary for Justice  
Secretary for Security